

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

**TITLE 8: Chapter 4, Subchapter 7, Article 10, Section 3380(d)
of the General Industry Safety Orders**

Personal Protective Equipment**SUMMARY**

This rulemaking is initiated at the request of the Division of Occupational Safety and Health (Division) in accordance with a Division Form 9, Request for New, Or Change In Existing Safety Order, dated March 11, 2004. The Division requested that Section 3380(d) be amended to clearly indicate that the employer is responsible for ensuring that all personal protective equipment (PPE), whether provided by the employer or owned by the employee, complies with established standards, and that the equipment is maintained in a safe, sanitary condition.

The Division's Form 9 describes an incident involving an employee who used a pair of company-owned protective gloves that had been improperly stored at a location that was contaminated by a corrosive material. The employee was not aware that the gloves had become contaminated by corrosive residues because of the improper storage. When the employee wore the gloves, his hands came in contact with the residues and chemical burns to skin of both hands later resulted. The Division noted that the existing standard does not require employers to maintain company-issued PPE in a safe and sanitary condition, but only that which is employee-owned. Consequently, this rulemaking action intends to clarify that all PPE, regardless of whether it is company-owned/issued or employee-owned, is to be properly stored and maintained so as to minimize the possibility of contamination by hazardous materials. This rulemaking action would also render California's standard consistent with comparable federal requirements contained in 29 Code of Federal Regulations (CFR) 1910.132 (a) and (b), which specifies that the employer is responsible for assuring that all PPE be properly stored and maintained in a sanitary and reliable condition.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This section defines personal protective devices and specifies the requirements pertaining to: (1) the marking/identification of personal protective equipment, (2) instructing employees in the use of PPE in accordance with the manufacturer's recommendations, (3) use and maintenance of employee-owned PPE, and (4) design, fit and durability requirements of PPE.

Subsection (d) requires the employer to assure that employee-owned PPE complies with standards and regulations prescribed by the Division of Industrial Safety, and that the equipment be maintained in a safe and sanitary condition.

It is proposed to revise subsection (d) to require that all personal protective equipment, whether employer-provided or employee-owned, be maintained in a safe and sanitary condition. An editorial revision is also proposed to delete the outdated reference to the Division of Industrial Safety and instead, require that all PPE comply with standards prescribed by Articles 10 and 10.1 of the General Industry Safety Orders, which pertain to Personal Safety Devices and Safeguards, and Personal Protective Clothing and Equipment for Fire Fighters, respectively. The proposed revisions will clarify the standard and are necessary to ensure that all PPE, regardless of who has supplied it, is safe for use. Moreover, the revisions are necessary to ensure equivalency with federal counterpart regulations.

DOCUMENTS RELIED UPON

- Memorandum (with attachments) dated March 11, 2004, from the Division of Occupational Safety and Health to the Occupational Safety and Health Standards Board, constituting the Division Form 9, Request for New, Or Change In Existing Safety Order.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. (See also explanation under “Cost Impact on Private Persons or Business” below.)

Cost Impact on Private Persons or Businesses

Although employer-provided personal protective equipment is now required to be maintained in a safe, sanitary condition as required by the proposal, no new costs are anticipated. Corresponding federal requirements contained in 29 CFR 1910.132 already require employer-provided protective equipment to be maintained in a sanitary, reliable condition. Therefore, the Board is not aware of any new costs that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.